

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554  
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In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments, )  
FM Broadcast Station. )  
(Saranac Lake, New York) )

MM Docket No. 99-83  
RM-9500

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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MAY 10 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF SARANAC LAKE RADIO, L.L.C.

1. Saranac Lake Radio, L.L.C. ("WSLK") hereby opposes the allotment of a new FM channel to Saranac Lake, New York, as proposed in this proceeding.<sup>1</sup> The allotment should not be made pending an investigation of the *bona fides* of the commitment of the Petitioner, Dana Puopolo, to construct and operate a station on any newly allotted channel.

2. Mr. Puopolo has filed at least 12 petitions for rule making to allot new FM channels to various communities across the country, with absolutely no showing of his ability to fulfill his commitment to file applications for and to construct stations on all, or even a substantial number, of those channels. While the Commission has not normally in the past inquired behind an expression of interest, it must do so here, where so many petitions are pending, the Petitioner

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<sup>1</sup> WSLK is the licensee of Stations WNBZ(AM) and WSLK(FM), Saranac Lake, New York.

is a lone individual who has presented no evidence of his ability to finance all his proposals, and the upcoming competitive bidding requirement will require more financial resources than ever.<sup>2</sup>

3. The Commission has recognized that the purposes of Section 307(b) of the Communications Act<sup>3</sup> are not well served when channels are allotted without a reasonable prospect that they will be utilized promptly. That is why a rule making petition to allot a new channel will not be granted unless a *bona fide* interest is expressed in filing an application and constructing a station. When the number of petitions becomes very large, however, the Commission must do more than accept a simple statement of interest. Rather, it must take at least rudimentary steps to determine the *bona fides* of the commitment. Under present processing policy, which in essence is to bury the Commission's head in the sand at the allotment stage, there is no way that the Commission can determine *bona fides*, fulfill its responsibility to provide for a fair and equitable distribution of channels, and avoid the waste of administrative resources that occurs when the allotment process results in a channel that is not used.<sup>4</sup>

4. There is good reason for the Commission to withhold action on Mr. Puopolo's proposal, in addition to the overall importance of preserving the integrity of the agency's

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<sup>2</sup> WSLK has this day filed a Petition for Investigation and Adoption of Policy Statement, requesting the Commission to adopt a formal policy of requiring substantiation of commitments to file and construct from mass filers of allotment petitions such as Mr. Puopolo. That Petition is incorporated by reference into these comments. A copy of that petition has been served Mr. Puopolo.

<sup>3</sup> Section 307(b) requires the Commission to make a "fair, efficient, and equitable" distribution of frequencies throughout the country.

<sup>4</sup> This is not a way to encourage more litigation but rather to resolve relatively simple problems early on, before administrative resources are wasted.

processes and properly fulfilling the purposes of Section 307(b) of the Communications Act. The upcoming competitive bidding environment is introducing a new dynamic into the application process. Because a potential applicant cannot tell against whom it will have to compete or how high the bids will go, it is no longer as easy to plan the process of filing and prosecuting applications as it was prior to competitive bidding. Therefore, it makes sense to file scattershot allotment petitions, as Mr. Puopolo has done, in the hope of finding at least some channels for which there will be no substantial competition. That practice should be strongly discouraged as a waste of agency resources.

5. But there is an additional, and highly significant, reason for the Commission not to accept an unsupported commitment to file an application. Under the competitive bidding regime, substantial up front payments will be required when applications are filed. Without this payment, an applicant will not be able to participate in an auction. Therefore, if a party files a dozen or more rule making petitions, his expressions of “interest” must be translated into an representations of having adequate financial resources to make a dozen or more up front payments. Not just a filing fee is at stake any more. It is therefore completely unrealistic for the Commission to close its eyes and not require any showing of resources when the circumstances on their face suggest a problem.

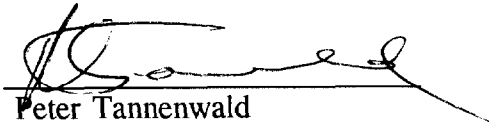
6. If Mr. Puopolo demonstrates that he is willing and able to construct and operate a station on each and every one of the allotments he has requested, then perhaps the proposal for Saranac Lake should be granted, despite the very small size of the market and the number of stations already operating there. However, based on the number of petitions that Mr. Puopolo has filed, the Commission cannot reasonably blindly accept his expressions of interest and yet

continue to assert that it will only allot channels where the parties intend to construct stations. Thus the Commission must suspend this proceeding until a policy has been developed and further evidence of *bona fides* has been presented and evaluated.

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May 10, 1999

Respectfully submitted,

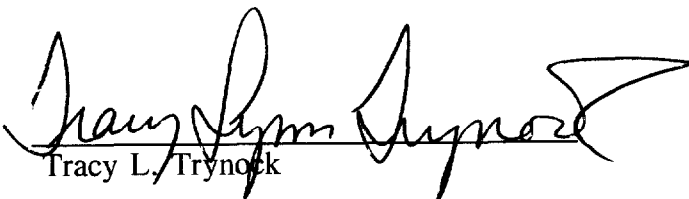
  
Peter Tannenwald  
Tara S. Becht

Counsel for Saranac Lake  
Radio, L.L.C.

#### **CERTIFICATE OF SERVICE**

I, Tracy L. Trynock, do hereby certify that I have, this 10th day of May, 1999, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Petition for Investigation and Adoption of Policy Statement" to the following:

Mr. Dana Puopolo  
37 Martin St.  
Rehoboth, MA 02769-2103

  
Tracy L. Trynock